

<<专利审查指南2010>>

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前言

The State Intellectual Property Office of the People's Republic of China, as the patent administration department under the State Council, commissions the Patent Office of the State Intellectual Property Office ( hereinafter the " Patent Office " ) to accept, examine and grant patent for patent applications. The Patent Office makes decisions on behalf and in the name of the State Intellectual Property Office. The Patent Reexamination Board, set up by the State Intellectual Property Office, is responsible for examining requests for reexamination and requests for invalidation and making decisions accordingly. In order to ensure objective, impartial, appropriate and timely handling of patent-related applications and requests in compliance with the laws, as pursuant to Rule 122 of the Implementing Regulations of the Patent Law, the State Intellectual Property Office enacts these Guidelines for Patent Examination ( hereinafter the " Guidelines " ) . These Guidelines detail and supplement the provisions of the Patent Law and its Implementing Regulations, and thus serve as bases and standards for the Patent Office and Patent Reexamination Board to refer to and follow in enforcing the relevant laws and regulations. They are also regulations which the related parties shall abide by at each of the aforesaid stages. These Guidelines are made by revision of the previous version of 2006 in light of practice, in accordance with the Patent Law of the People's Republic of China promulgated on December 27, 2008 and the Implementing Regulations of the Patent Law of the People's Republic of China promulgated on January 9, 2010, and are hereby promulgated as regulations of the State Intellectual Property Office.

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### 内容概要

本指南共分五个部分：第一部分（初步审查）、第二部分（实质审查）、第三部分（进入国家阶段的国际申请的审查）、第四部分（复审与无效请求的审查）和第五部分（专利申请及事务处理）。第一、二、四部分按专利申请的审批流程顺序排列，第三部分为进入国家阶段的国际申请审查的具体规定，第五部分为适用各程序的通用规则。

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## 章节摘录

4.1.3.2 Applicant Being Foreign Individual, Enterprise or Other Type of Organization Article 18 provides that, where any foreign individual, enterprise or other type of organization having no habitual residence or business office in China files a patent application in China, the application shall be treated under the Patent Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity. Where the applicant is a foreigner, a foreign enterprise or other foreign organization, his or its name or title, the nationality, or the country or region in which the applicant is registered shall be stated in the request. Where the examiner has any doubt about the nationality, or the registered place of the applicant filled in the request, he may invite the applicant to provide a certificate of nationality or document certifying the registered place in accordance with the provisions of Rule 33 ( 1 ) or ( 2 ) . Where the applicant states in the request that it has a business office in China, the examiner shall invite the applicant to submit a certifying document provided by the local administrative authority for industry and commerce. Where the applicant states that it has a habitual residence in China, the examiner shall invite the applicant to submit a document provided by the public security department, certifying that he is permitted to reside in China for one year or longer. After it is affirmed that the applicant is a foreign individual, enterprise or other type of organization having no habitual residence or business office in China, the examiner shall examine whether or not the nationality or the registered place of the applicant, as filled in the request, is in conformity with one of the following three conditions: ( 1 ) the country to which the applicant belongs has concluded with China an agreement affording patent protection to the nationals of each other; ( 2 ) the country to which the applicant belongs is a country party to the Paris Convention for the Protection of Industrial Property ( hereinafter referred to as the Paris Convention ) or a member of the World Trade Organization. ( 3 ) the country to which the applicant belongs provides patent protection to foreign person on the basis of the principle of reciprocity.

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